

**From:** rpjday  
**To:** Microsoft ATR  
**Date:** 12/30/01 11:38am  
**Subject:** Comments on proposed Microsoft settlement

Dec 30, 2001

Robert P. J. Day  
President,  
Eno River Technologies  
Chapel Hill, NC

Re: Microsoft anti-trust settlement

Sir/Madam:

I'm writing to express my opinion on the proposed settlement regarding Microsoft's illegal monopolistic behavior. While there are numerous issues that could be addressed, I'm assuming others will cover those issues and I'm going to confine myself to discussing just one topic which I would dearly like to see addressed in any settlement proposal -- this involves Microsoft's forced bundling of their operating systems with almost every OEM's personal computer.

As everyone knows, it is virtually impossible to buy a PC from any major vendor (Dell, Compaq, Gateway, etc.) that does not come pre-loaded with some version of a Microsoft operating system. The consumer is, in all of these cases, never given a choice of a non-Microsoft operating system or, for that matter, the choice of no OS at all. For years, the situation has been: if you buy a new PC, you got a Microsoft operating system whether you wanted it or not.

And let's be clear: you paid for this software, whether you ever used it or not. While vendors would (disingenuously) claim that the software was tossed in for free, it's clear that the actual cost was simply tacked on to the final price of the PC. But it gets better.

Once you got the PC home and got a chance to read Microsoft's end user license agreement (EULA), you were told quite directly that, if you did not agree to the terms of the EULA, you had the right to return the software for a refund. However, if you tried to return it to the vendor, their response was that you had to contact Microsoft. Microsoft, of course, pointed the consumer back at the vendor, with the result that no one was prepared to refund the price of the software back to the consumer. In short,

the consumer, in purchasing a PC, was forced to accept and pay for software he did not want, and was not given the opportunity to return it for a refund, despite the guarantees of the EULA. (By the way, this additional forced cost to the consumer is jokingly referred to in the industry as the "Microsoft tax," for obvious reasons.)

If anyone needs evidence of Microsoft's monopolistic power, it's hard to imagine a better example than a company which has the clout to force a consumer to purchase and accept, with no opportunity for refund, a product that the consumer explicitly says he or she does not want. What more proof does anyone need of Microsoft's abusive behavior?

There are many changes I'd like to see in the current proposed settlement, but at an absolute minimum, Microsoft should be enjoined from forcing OEMs to bundle their operating system if the consumer does not want it and, furthermore, consumers who choose to forego a Microsoft product should have their purchase price adjusted (by a realistic amount) to reflect this.

Thank you for your attention.

Robert P. J. Day  
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